IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 11TH JANUARY 2007 / 21ST PAUSHA 1928

Crl.MC.No. 990 of 2004()

CC.331/2003 of CHIEF JUDICIAL MAGISTRATE, ALAPPUZHA

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PETITIONER: ACCUSED:

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1. K. GOPALAKRISHNAN, THE EDITOR,
   MATHRUBHUMI DAILY, KOCHI-682 017.

2. V. BHASKARA MENON, THE PRINTER AND
   PUBLISHER, MATHRUBHUMI DAILY, KOCHI.

3. P.V. CHANDRAN, MANAGING EDITOR,
   MATHRUBHUMI DAILY, MATHRUBHUMI PRINTING AND
   PUBLISHING CO.LTD., KOZHIKODE.

4. R. RAVIKUMAR, S/O. RAVIPALAN,
   KIZHAKKE VELIYIL VEEDU, S.L. PURAM P.O.,
   WARD NO.6, KANJIKUZHI VILLAGE, CHERTHALA.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT/STATE:

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1. A.C. THOMAS, S/O. LATE CHACKO
   AYYANOLIL, CHRIST NAGAR, THELLAKOM,
   KOTTAYAM DISTRICT.

2. STATE REP. BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.C.C.THOMAS
R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 11/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 990 of 2004

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Dated this the 11th day of January, 2007

O R D E R

The petitioners are accused in a prosecution under section 500 I.P.C. initiated by the first respondent herein. The first respondent is a police official. He complains that a news item, perse defamatory to him, has been published in the daily, (Mathrubhoomi), of which the first respondent is the Editor, the second respondent is the Printer and Publisher, third respondent is the Managing Editor and the 4th respondent the Reporter, who gave the news item for publication. On the complaint filed by the first respondent, without conducting any enquiry under Section 202 Cr.P.C. cognizance was taken by the learned Magistrate and summons was issued to the petitioners. The petitioners have all come to this Court with the prayer that the proceedings against them may be quashed invoking the powers under Section 482 Cr.P.C.

2. That the petitioners are the Editor, Printer and Publisher, Managing Editor and the Reporter is not seriously disputed. It is not

disputed that the names of the accused 1 to 3 appear as such in the allegedly objectionable publication.

3. I have heard the learned counsel for the petitioners and the counsel for the respondent. The learned counsel for the petitioners raises on two specific contentions.

4. The first contention is applicable to all the four accused persons. It is contended that the learned Magistrate has taken cognizance without due and proper application of mind. It is contended that though the complaint itself shows that a notice was issued by the complainant to the accused persons and they had submitted a reply, cognizance has been taken without and before insisting on production of the reply notice and without perusing the contents of the said reply notice. In these circumstances it must be held that there is no proper application of mind by the learned Magistrate before issuing process under Section 204 Cr.P.C., contends counsel.

5. I am unable to accept this contention. The reply notice has not been produced before this Court for perusal. It is evident and cannot be disputed that the publication is per se defamatory. If the imputations in the publication are true and the petitioners are entitled to claim the advantage of

any of the exceptions to criminality under Section 499 I.P.C., it is for the petitioners to claim the advantage of the exception. It is for the petitioners to establish such plea for advantage of the exception.

6. As stated earlier, the reply notice is not made available for the perusal of this court. The counsel for the complainant submits that the Electricity Board had made it clear that no such proceedings had ever been initiated against the complainant as alleged in the publication in question. The first objection raised cannot, in these circumstances, succeed.

7. The second contention is primarily raised on behalf of the third accused. The third accused is stated to be the Managing Editor. It is contended that presumption under Section 7 of the Press and Registration of Books Act cannot apply to the Managing Editor. In these circumstances with the help of Section 7 of the said Act the proceedings cannot be commenced against the third accused. No sufficient and satisfactory averments specifically are raised regarding the complicity of the third accused and in these circumstances the third accused is entitled to get the proceedings against him quashed under Section 482 Cr.P.C. it is asserted.

8. The learned counsel for the respondent relies on the decision in **K.M. Mathew** v. **K.A. Abraham** (AIR 2002 SC 2989). The mere fact

that the person is described as Managing Editor does not give statutory immunity for such Managing Editor, it is clearly held in that decision. I have been specifically taken through paragraphs 13 to 15 of the said decision, which I extract below for immediate reference.

> "13. A conjoint reading of these provisions will go to show that in the case of publication of any newspaper, each copy of the publication shall contain the names of the owner and the editor who have printed and published that newspaper. Under Section 7 of the Act, there is a presumption that the Editor whose name is printed in the newspaper as Editor shall be held to be the Editor in any civil or criminal proceedings in respect of that publication and the production of a copy of the newspaper containing his name printed thereon as Editor shall be deemed to be sufficient evidence to prove that fact, and as the `Editor' has been defined as the person who controls the selection of the matter that is published in a newspaper, the presumption would go to the extent of holding that he was the person who controlled the selection of the matter that was published in the newspaper. But at the same time, this presumption contained in Section 7 is a rebuttable presumption and it will be deemed as sufficient evidence unless the contrary is proved. Therefore, it is clear that even if a person's name is printed as Editor in the newspaper, he can still show that he was not really the Editor and had no control over the selection of the matter that was published in the newspaper. Section 7 only enables the court to draw a presumption that the person whose name was printed as Editor was the Editor of such newspaper, if the publication produced in the court shows to that effect.
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> 14. The contention of the appellants in these cases is that they had not been shown as Editors in these

> publications and that their names were printed either as Chief Editor, Managing Editor or Resident Editor and not as `Editor' and there cannot be any criminal prosecution against them for the alleged libellous publication of any matter in that newspaper.
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> 15. The contention of these appellants is not tenable. There is no statutory immunity against Managing Editor, Resident Editor or Chief Editor against any prosecution for the alleged publication of any matter in the newspaper over which these persons exercise control. In all these cases, the complainants have specifically alleged that these appellants had knowledge of the publication of the alleged defamatory matter and they were responsible for such publication; and the Magistrates who had taken cognizance of the offence held that there was prima facie case against these appellants. It was under such circumstances that the summonses were issued against these appellants."

9. In the light of the dictum referred above, the short question is only whether specific allegation has been raised against the third accused to justify the issue of process against him. The counsel for the complainant relies on the following averments in paragraph 4 of Annex.I complaint primarily.

> "The accused persons are responsible for printing and publishing the said false and defamatory news item and the accused have no justification whatsoever for printing and publishing such false, wanton, reckless allegations about the complainant in the Daily which virtually portraged his as law breaker and thereby harm his reputation."

10. This Court must be slow to invoke its powers under Section 482 Cr.P.C. when the allegations on the face of it indicate complicity of a person, against whom process has been issued. The law is settled that where allegations are raised against a Managing Editor of his involvement in the commission of the crime, the mere fact that he is the Managing Editor will not justify quashing of proceedings against him. At the moment and with the available inputs, I am satisfied that the averments referred to earlier read along with the tenor and totality of circumstance is sufficient to justify issue of process against the third accused. In these circumstances I am not satisfied that the powers under section 482 Cr.P.C. can or need be invoked to quash the proceedings against all or any of the petitioners.

11. The learned counsel for the petitioners submits that considering the nature of the alleged responsibility of the third accused, third accused may be exempted from personal appearance and he may be permitted to appear through pleader. It is for the petitioner/third accused to appear through counsel and make an application for exemption. In the nature of facts and circumstances, I have no reason to assume that the learned Magistrate would not consider such application for exemption of the third

accused on merits and in accordance with law. Only after such petition is disposed of, if filed immediately, should the Magistrate insist on personal appearance of the third accused.

12. This Crl.M.C. is accordingly dismissed.

(R. BASANT)
Judge

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